

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

*In re Dealer Management Systems Antitrust  
Litig.*, MDL 2817

This Document Relates To:

THE VENDOR PUTATIVE CLASS  
ACTION

THE DEALERSHIP PUTATIVE CLASS  
ACTION

MDL No. 2817  
Case No. 18-cv-00864

Hon. Rebecca R. Pallmeyer

**CDK'S MOTION TO CLARIFY THE COURT'S ORDER**

CDK respectfully submits this motion to confirm forthcoming deadlines in the above-captioned matter in light of the Court's May 2, 2024 Order altering the class certification schedule. ECF No. 1489. The parties disagree about the deadlines for CDK's *Daubert* briefing under the Order. Although CDK attempted to resolve this dispute without seeking the Court's involvement, as set forth below, Plaintiffs oppose this motion and seek to maintain prior deadlines that do not make sense in light of the Order.

1. On May 2, 2024, the Court ordered that CDK could file its requested sur-reply and a supplemental expert report responding to certain new analyses by Plaintiffs' experts on May 31, 2024. ECF No. 1489.

2. On May 8, 2024, CDK sent Plaintiffs a proposed scheduling order based on its understanding of the Court's May 2, 2024 Order and asked if Plaintiffs would consent to CDK filing the schedule on behalf of all parties. *See* Ex. A (G. Brier 05/08 Eml. to Plaintiffs). That schedule, which is set forth in Paragraph 7 below, provided for the submission of all of CDK's

remaining briefs on May 31, 2024 (including its sur-reply, its *Daubert* replies, and its *Daubert* opposition), together with its supplemental expert report.

3. In response, Plaintiffs agreed that CDK's sur-reply and supplemental expert report are due on May 31, 2024, but argued that CDK's *Daubert* briefs are still due on the original May 20 deadline. *Id.* (M. Nemelka 05/09 Eml. to CDK).

4. CDK, in turn, explained that Plaintiffs' position does not make sense: Bifurcating the *Daubert* and expert report deadlines would not allow CDK to rely on and cite to the report (which all parties agree is due on May 31) in their *Daubert* briefs. *Id.* (K. Katz 05/09 Eml. to Plaintiffs). Plaintiffs' position would require that CDK make its *Daubert* arguments without the benefit of that report, which the Court explicitly allowed so CDK could address Plaintiffs' experts' use of recently produced Authenticom data—an issue that is directly relevant to the *Daubert* motions.

5. For example, Dealers' expert, Dr. Michael Williams, uses the updated Authenticom data to perform new overcharge and common impact analyses that Dealers rely upon in opposing CDK's *Daubert* motion against Dr. Williams. *See* ECF No. 1476 ("Williams *Daubert* Opp.") at 2 n.3, 3, 6, 19. And vendors argue that the Authenticom data moots an entire prong of CDK's opening *Daubert* brief. *See* ECF No. 1470 ("Israel *Daubert* Opp.") at 13–14.

6. Given the obvious relevance of the supplemental expert report to CDK's upcoming *Daubert* briefs, CDK was hopeful that the parties could reach a reasonable agreement on the schedule. However, because Plaintiffs insisted that the original May 20 deadline for CDK's *Daubert* briefs stands, CDK had no choice but to bring this issue to the Court.

7. Consistent with the Court's prior Order and to ensure that CDK is able to submit its supplemental expert report in support of its *Daubert* arguments, CDK respectfully asks that the Court confirm and enter the following schedule:

<u>EVENT</u>	<u>DEADLINE</u>
CDK's Sur-Reply (15 pages) CDK's Supplemental Expert Report CDK's Reply <i>Daubert</i> Briefs & CDK's Opposition <i>Daubert</i> Brief (if any)	Friday, May 31, 2024
Plaintiffs' Sur-Responses (7 pages) Plaintiffs' Supplemental Expert Reports (if any) Dealers' Reply <i>Daubert</i> Brief (if any)	Monday, June 10, 2024

Dated: May 10, 2024

Respectfully Submitted,

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